

REMARKS

Reconsideration is respectfully requested. Applicant notes that the Examiner has stated that Claims 5-20 would be allowable if rewritten in independent form including all the limitations of the base Claim and any intervening Claims.

Claim Objections

With respect to Claim 11, Applicant believes that deletion of the term "of said at least one" would result in an antecedent error.

Claim Rejections - 35 U.S.C. §102

The Examiner has rejected Claims 1-4 and 21-29 under 35 U.S.C. § 102, as allegedly being anticipated by *Botts* (US 4,214,628).

Botts relates to a system for injecting fluid into an underground formation, such as a well. The examiner alleges that *Botts* standpipe 40, well injector 20, housing (for pumps) 120, hinge structures 122, top portion of housing 124, additional framework 100, and plate 102 disclose a system for capping a well.

With respect to independent Claim 1, the elements that allegedly comprise a system for capping at least one well pipe (*Botts* elements 40, 20, 120, 122, 124, 100, and 102) do not function as a system for capping at least one well pipe within the meaning of Applicant's disclosure. Applicant's Claim 1 specifically recites a "well capping means for capping the at least one well pipe" where the well capping means comprises "closure means for substantially closing the at least one upper opening [of the well pipe]," "protective cover means for protectively covering the at least one local controller device," and "support means for supporting the at least one local controller device within said protective cover means." Per Applicant's disclosure, the well capping means comprises a closure means for closing *the upper opening of a well pipe* thereby preventing contaminants from entering the well. In Applicant's specification, closure member 106 preferably caps the upper opening of a well pipe. The Examiner alleges that *Botts* element 120 is a "well capping means;" however, *Botts* element 120 is a housing for a set of pumps and does not function to cap a well. *Botts* element 120 does not close the upper opening of a well pipe as Applicant's element 106 does. Put another way, if a user placed *Botts* element 120 on a well pipe, the well pipe would not be capped because *Botts* element 120 surrounds a pipe; it does not cap the upper opening of a pipe. In other words, a pipe goes

through housing 120, but does not cap the upper opening of a pipe. *Botts* closure dome 62 closes the upper opening of a standpipe, however, closure dome 62 does not comprise Applicant's other limitations, namely, "protective cover means for protectively covering the at least one local controller device" or "support means for supporting the at least one controller device within said protective cover means."

The Examiner alleges that *Botts* elements 122 and 124 are a "closure means." *Botts* elements 122 and 124 disclose a hinged opening for accessing the pumps within housing 120. While elements 122 and 124 do close the housing for the pumps, they do not close the upper opening of the well pipe as Applicant has claimed. Per the Applicant's specification, Applicant's closure means is directed to element 106, a component of Applicant's invention that fits onto the upper opening of a well pipe and closes such upper opening. *Botts* elements 122 and 124 do not close an upper opening of a pipe.

As discussed above, *Botts* does not show a system for capping at least one well pipe. The Federal Circuit has ruled that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Also, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the Examiner has not met its burden of establishing a prima facie case of anticipation because *Botts* does not disclose each and every element of Applicant's Claims. Applicant respectfully submits that Claim 1 is patentably distinguishable over *Botts*. Thus, it is respectfully submitted that rejection of Claim 1 (and all Claims dependent thereon) should be withdrawn.

With respect to independent Claim 2, Applicant respectfully submits that this Claim patentably distinguishes over *Botts* for the reasons discussed in connection with Claim 1. Thus, it is respectfully submitted that rejection of Claim 2 (and all Claims dependent thereon) should be withdrawn.

With respect to dependent Claim 21, applicant respectfully submits that the Examiner has not established a prima facie case of anticipation under 35 U.S.C. § 102. There is no teaching in *Botts* of a well cap comprising plastic as claimed by Applicant. Further, the *Botts* device

preferably comprises fiberglass or sheet metal, not plastic (*Botts* column 6, lines 3-4). Further, the Examiner has not mentioned this limitation in rejecting Claim 21. Thus, the Examiner's rejection "with respect to all the depending Claims, the reference teaches the limitations as claimed" is improper. Per 37 C.F.R. § 1.104(c)(2), "[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." Thus, it is respectfully submitted that rejection of Claim 21 (and all Claims dependent thereon) should be withdrawn.

With respect to independent Claim 22, Applicant respectfully submits that the subject matter claimed therein patentably distinguishes over *Botts*. Specifically, Claim 22 recites a system comprising "at least one pump to pump water from the at least one pipe interior," "at least one local controller to control said at least one pump," and "at least one well cap, comprising at least one internal hollow, to cap the at least one upper well pipe opening" wherein "said at least one local controller is located essentially within said at least one internal hollow of said at least one well cap." *Botts* does not teach such a system. As discussed above, *Botts* housing 120 does not function as a well cap to cap an upper opening of a pipe. Closure dome 62 closes the upper opening of a pipe; however, closure dome 62 is not a well cap within the meaning of Applicant's disclosure because it does not comprise Applicant's other limitations, namely "at least one local controller to control said at least one pump" wherein "said at least one local controller is located essentially within said at least one internal hollow of said at least one well cap." The Examiner has alleged that *Botts* element 20 (well injector) is a controller. However, the well injector (the alleged controller) is not within the internal hollow of said at least one well cap. For the above-mentioned reasons, Applicant respectfully submits that Claim 22 is patentably distinguishable over *Botts*. Thus, it is respectfully submitted that rejection of Claim 22 (and all Claims dependent thereon) should be withdrawn.

Finally, dependent Claims 3, 4, 21, and 23-29 depend directly or indirectly from independent Claims 1, 2, and 22, and incorporate all the limitations of such Claims. Thus, it is respectfully submitted that rejection of Claim 3, 4, 21, and 23-29 (and all Claims dependent thereon) should be withdrawn.

For the reasons given above, and after careful review of the cited reference, Applicant respectfully submits that the cited reference will not result in Applicant's claimed invention in the present Claims.

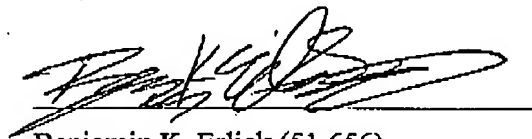
In view of the above comments, all of the presently pending Claims in this application are believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw any outstanding rejections of the Claims and to allow this application.

A petition and fee for extension of time under 37 C.F.R. § 1.136(a) have been submitted under separate cover. If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

If the Examiner is inclined for any reason not to issue a notice of allowability after entering this amendment, Applicant respectfully requests (not as a matter of form but as a special request in this case) that the Examiner grant a telephonic interview to Applicant's undersigned agent in order to discuss Applicant's amendment (before the Examiner prepares a second office action), to attempt to reach mutual understanding and clarify any outstanding issues. Applicant respectfully requests that the Examiner call Applicant's undersigned agent at 602-263-9200 to schedule a telephonic interview at least two business days in advance to allow the Applicant's undersigned agent time to prepare and schedule the interview. For telephonic scheduling purposes, Applicant's agent is located in Arizona, in the Mountain Standard Time zone.

Respectfully submitted,

Date: February 6, 2006

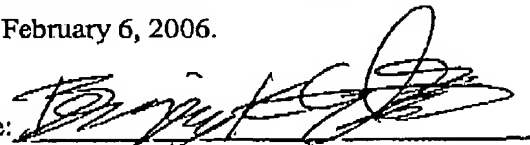


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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted, via facsimile, to the Patent and Trademark Office fax number (571)-273-8300 on February 6, 2006.

Date February 6, 2006

Signature: 

Benjamin K. Erlick, Agent for Appl.